



# Toxics Cleanup Program Procedure

## Procedure 500B

*Resource Contact* Policy and Technical Support Staff

*Effective* July 1, 1991

*References*

*Revised* May 8, 2006

## **Procedure 500B Identification of Potentially Liable Persons**

**Site Manager**

1. Conducts PLP search in consultation with supervisor and where necessary, the AAG. (See Identification of PLPs checklist, p.3.)

2. Identifies PLPs to be notified.

3. Issues preliminary PLP notice letter. (See Elements of the Preliminary PLP Status Letter.)

**PLP**

4. Responds within thirty (30) days.

- a. Provides written waiver of notice and comment period.

- b. Provides comment on proposed status.

**Site Manager**

5. Reviews PLP comments and discusses with supervisor and where necessary, the AAG.

6. Prepares final determination of PLP status letter for section manager.

**Section Manager**

7. Signs the letter.

**Site Manager**

8. Maintains record of the PLP search.

**Note:** This procedure is intended solely for the guidance of Ecology staff. It is not intended, and cannot be relied on, to create rights, substantive or procedural, enforceable by any party in litigation with the state of Washington. Ecology may act at variance with this policy depending on site-specific circumstances, or modify or withdraw this policy at any time.

Approved.

A handwritten signature in black ink, appearing to read "James J. Pendowski".

James J. Pendowski, Manager  
Toxics Cleanup Program

## **Attachment 1**

### **Elements of the Preliminary PLP Status Letter**

As indicated in POL 500B, WAC 173-340-500 (2) requires that the preliminary PLP status letter contain several elements. These shall include:

- a. The identity of the potentially liable person;
- b. A general description of the facility's location;
- c. The basis for the Department of Ecology's (Ecology) belief that the person has a relationship to the facility and is a PLP under RCW 70 105D.040;
- d. A description of the credible evidence that supports Ecology's belief that a release or threatened release of a hazardous substance has occurred at the facility and that the release or threatened release poses a threat to human health or the environment.
- e. An indication of Ecology's immediate intentions regarding enforcement or other actions at the facility;
- f. The names and addresses of other persons to whom Ecology has sent a status letter;
- g. The name and telephone number of the Ecology contact;
- h. A brief explanation of the process; and
- i. A statement of the statutory authority.

The PLP preliminary status must be sent by certified mail, return receipt requested, or by personal delivery.

## Attachment 2

### Identification of Potentially Liable Persons – Potential Information Sources.

Potential sources of information to identify persons who may be potentially liable for a release of hazardous substances are listed below. A description of all records reviewed should be identified and placed in the site file.

1. Business license search;
2. Vehicle/heavy equipment license search;
3. Factory-built housing registration search;
4. Court records search;
5. Regulatory records/Permits search;
6. Business records search, including:
  - a. Invoices;
  - b. Hazardous waste manifests;
  - c. RCRA manifests;
  - d. SARA Title III records;
  - e. County solid waste plans;
  - f. Contracts with lessors, lenders, suppliers, generators, or transporters;
  - g. Employee records;
  - h. Accident reports;
  - i. Insurance documents;
  - j. Tax records;
  - k. Technical data or reports;
  - l. Materials handling or maintenance reports;
  - m. Photographs;
  - n. Notes, memos, letters, or other written correspondence;
  - o. Utility billings; and
  - p. Secretary of State and Department of Revenue records;
7. Interviews with government officials;
8. Interviews with employees, PLPs, and neighbors;
9. Post signs on property to request information;
10. Place advertisements in the newspaper requesting information;
11. Search newspaper archives for articles relating to the facility or owner/operator;
12. Issue information request letters;
13. Review of county assessor records for current and previous owners. County assessor records should also be reviewed for mortgage holders, right of way & easement holders and lien holders; and
14. Review of non-governmental records of previous property uses and ownership. Examples of such records are POLK business directories, Sanborn maps, publications in a local library, historical museum records and old phone books.

Note: The EPA Superfund PRP Search Manual published in September 2003 provides additional information on how to conduct a PLP search. Use the following link to access this manual:

<http://www.epa.gov/compliance/resources/publications/cleanup/superfund/prpmanual/index.html>

### Attachment 3

[EXAMPLE]

[PLP PRELIMINARY STATUS LETTER]

**\*MUST BE SENT CERTIFIED MAIL\***

**RETURN RECEIPT REQUESTED OR BY PERSONAL DELIVERY**

[DATE]

[PLP NAME]

[STREET ADDRESS]

[CITY, STATE POSTAL CODE]

**Re: Notice of Potential Liability under the Model Toxics Control Act for the Release of Hazardous Substances at the following Hazardous Waste Site:**

- 
- Name: [SITE NAME]
  - Address: [SITE ADDRESS]
  - County Assessor's Parcel Number(s) [OPTIONAL]
  - Facility/Site No.: [SITE NUMBER]

Dear [PLP NAME]:

Under the Model Toxics Control Act (MTCA), chapter 70.105D RCW, which governs the cleanup of hazardous waste sites in Washington State, the Department of Ecology (Ecology) may identify persons that it finds are liable for the release of hazardous substances at a site. Before making such a finding, Ecology must provide persons with notice and an opportunity to comment on the proposed finding. Any person whom Ecology finds, based on credible evidence, to be liable is known as a "potentially liable person" or "PLP".

#### **Proposed Finding of Liability**

Based on credible evidence, Ecology is proposing to find [PLP NAME] liable under RCW 70.105D.040 for the release of hazardous substances at the [SITE NAME] facility (Site). This proposed finding is based on the following evidence:

1. [DEFINE RELATIONSHIP OF PLP TO THE SITE (e.g., owner or operator) AND PROVIDE EVIDENCE THAT DOCUMENTS THAT RELATIONSHIP].
2. [PROVIDE EVIDENCE THAT RELEASE OR THREATENED RELEASE OF HAZARDOUS SUBSTANCES HAS OCCURRED AT THE SITE];

3. [PROVIDE EVIDENCE THAT THE RELEASE OR THREATENED RELEASE  
POSES A THREAT TO HUMAN HEALTH OR THE ENVIRONMENT];

**Opportunity to Respond to Proposed Finding of Liability**

In response to Ecology's proposed finding of liability, you may either:

1. Accept your status as a PLP without admitting liability and expedite the process through a voluntary waiver of your right to comment. This may be accomplished by signing and returning the enclosed form or by sending a letter containing similar information to Ecology;
2. Challenge your status as a PLP by submitting written comments to Ecology within thirty (30) calendar days of the date you receive this letter; or
3. Choose not to comment on your status as a PLP.

Please submit your waiver or written comments to the following address:

[SITE MANAGER NAME]  
[REGION ABBREVIATION] Toxics Cleanup Program  
[ADDRESS OF REGIONAL OFFICE]

After reviewing any comments submitted or after 30 days if no response has been received, Ecology will make a final determination regarding your status as a PLP and provide you with written notice of that determination.

**Identification of Other Potentially Liable Persons**

Ecology [HAS NOTIFIED / WILL BE NOTIFYING] the following additional persons that they [MAY BE / ARE] potentially liable for the release of hazardous substances at the Site:

1. [PLP NAME];
2. [CONTINUE LIST].

If you are aware of any other persons who may be liable for the release of hazardous substances at the Site, Ecology encourages you to provide us with their identities and the reason you believe they are liable. Ecology also suggests you contact these other persons to discuss how you can jointly work together to most efficiently clean up the Site.

**Responsibility and Scope of Potential Liability**

Please note that Ecology may either conduct or require PLPs to conduct remedial actions to investigate and clean up the release of hazardous substances at a site. PLPs are encouraged to

initiate discussions and negotiations with Ecology and the Office of the Attorney General that may lead to an agreement on the remedial action to be conducted.

Please also note that each liable person is strictly liable, jointly and severally, for all remedial action costs and for all natural resource damages resulting from the release of hazardous substances at a site. If Ecology incurs remedial action costs in connection with the investigation or cleanup of real property and those costs are not reimbursed, then Ecology has the authority under RCW 70.105D.055 to file a lien against that real property to recover those costs.

### **Next Steps in Cleanup Process**

In response to the release of hazardous substances at the Site, Ecology intends to conduct the following actions under MTCA:

1. [LIST ACTIONS THAT ECOLOGY INTENDS TO CONDUCT OR REQUIRE AT THE SITE (e.g., site hazard assessment) AND WHETHER ECOLOGY INTENDS TO INITIATE DISCUSSIONS FOR AN ORDER OR DECREE];
2. [CONTINUE LIST].

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~~For a description of the process for cleaning up a hazardous waste site under MTCA, please refer to the enclosed fact sheet.~~

Ecology's policy is to work cooperatively with PLPs to accomplish the prompt and effective cleanup of hazardous waste sites. Please note that your cooperation in planning or conducting remedial actions at the Site is not an admission of guilt or liability.

### **Contact Information**

If you have any questions regarding this letter or if you would like additional information regarding the cleanup of hazardous waste sites, please call me at [PHONE NUMBER]. Thank you for your cooperation.

Sincerely,

[SITE MANAGER NAME]  
[REGION ABBREVIATION] Toxics Cleanup Program

Enclosures: 2

ENCLOSE THE FOLLOWING DOCUMENTS:

- (1) FOCUS: MODEL TOXICS CONTROL ACT CLEANUP REGULATION: PROCESS FOR CLEANUP OF HAZARDOUS WASTE SITES (Pub. No. #94-129)
- (2) VOLUNTARY WAIVER OF RIGHT TO COMMENT FORM

## Attachment 4

[EXAMPLE]

[COMBINED EARLY NOTICE LETTER AND PRELIMINARY PLP NOTIFICATION]

**\*MUST BE SENT CERTIFIED MAIL\*  
RETURN RECEIPT REQUESTED OR BY PERSONAL DELIVERY**

[DATE]

[PLP NAME]

[STREET ADDRESS]

[CITY, STATE POSTAL CODE]

**Re: A Reported Release of Hazardous Substances and Potential Liability for the Release at the following site.**

- Name: [SITE NAME]
- Address: [SITE ADDRESS]
- County Assessor's Parcel Number(s) [OPTIONAL]
- Facility/Site No.: [SITE NUMBER]

Dear [PLP NAME]:

Under the Model Toxics Control Act (MTCA), chapter 70.105D RCW, which governs the cleanup of hazardous waste sites in Washington State, the Department of Ecology (Ecology) may identify persons that it finds liable for the release of hazardous substances at a site. Before making such a finding, Ecology must provide persons with notice and an opportunity to comment on the proposed finding. Any person whom Ecology finds, based on credible evidence, to be liable is known as a "potentially liable person" or "PLP".

As a result of an initial investigation conducted by Ecology at [Facility Name] [Site Address] on [Date], Ecology believes that a release of a hazardous substance has occurred and that further action will be required at this site. Based on this investigation, Ecology intends to add this property to our database of suspected hazardous waste sites.

### **Proposed Finding of Liability**

Based on credible evidence, Ecology is proposing to find [PLP NAME] liable under RCW 70.105D.040 for the release of hazardous substances at the [SITE NAME] facility (Site). This proposed finding is based on the following evidence:

1. [DEFINE RELATIONSHIP OF PLP TO THE SITE (e.g., owner or operator) AND PROVIDE EVIDENCE THAT DOCUMENTS THAT RELATIONSHIP].
2. [PROVIDE EVIDENCE THAT RELEASE OR THREATENED RELEASE OF HAZARDOUS SUBSTANCES HAS OCCURRED AT THE SITE];
3. [PROVIDE EVIDENCE THAT THE RELEASE OR THREATENED RELEASE POSES A THREAT TO HUMAN HEALTH OR THE ENVIRONMENT];

**Opportunity to Respond to Proposed Finding of Liability**

In response to Ecology's proposed finding of liability, you may either:

1. Accept your status as a PLP without admitting liability and expedite the process through a voluntary waiver of your right to comment. This may be accomplished by signing and returning the enclosed form or by sending a letter containing similar information to Ecology;
2. Challenge your status as a PLP by submitting written comments to Ecology within thirty (30) calendar days of the date you receive this letter; or
3. Choose not to comment on your status as a PLP.

Please submit your waiver or written comments to the following address:

[SITE MANAGER NAME]  
[REGION ABBREV.] Toxics Cleanup Program  
[ADDRESS OF REGIONAL OFFICE]

After reviewing any comments submitted or after 30 days if no response has been received, Ecology will make a final determination regarding your status as a PLP and provide you with written notice of that determination.

**Identification of Other Potentially Liable Persons**

Ecology [HAS NOTIFIED / WILL BE NOTIFYING] the following additional persons that they [MAY BE / ARE] potentially liable for the release of hazardous substances at the Site:

1. [PLP NAME];
2. [CONTINUE LIST].

If you are aware of any other persons who may be liable for the release of hazardous substances at the Site, Ecology encourages you to provide us with their identities and the reason you believe they are liable. Ecology also suggests you contact these other persons to discuss how you can jointly work together to most efficiently clean up the Site.



### **Responsibility and Scope of Potential Liability**

Please note that Ecology may either conduct, or require PLPs to conduct, remedial actions to investigate and clean up the release of hazardous substances at a site. PLPs are encouraged to initiate discussions and negotiations with Ecology and the Office of the Attorney General that may lead to an agreement on the remedial action to be conducted.

Please also note that each liable person is strictly liable, jointly and severally, for all remedial action costs and for all natural resource damages resulting from the release of hazardous substances at a site. If Ecology incurs remedial action costs in connection with the investigation or cleanup of real property and those costs are not reimbursed, then Ecology has the authority under RCW 70.105D.055 to file a lien against that real property to recover those costs.

### **Next Steps in Cleanup Process**

In response to the release of hazardous substances at the Site, Ecology intends to conduct the following actions under MTCA:

1. [LIST ACTIONS THAT ECOLOGY INTENDS TO CONDUCT OR REQUIRE AT THE SITE (e.g., site hazard assessment) AND WHETHER ECOLOGY INTENDS TO INITIATE DISCUSSIONS FOR AN ORDER OR DECREE];
2. [CONTINUE LIST]

For a description of the process for cleaning up a hazardous waste site under MTCA, please refer to the enclosed fact sheet.

Ecology's policy is to work cooperatively with PLPs to accomplish the prompt and effective cleanup of hazardous waste sites. Please note that your cooperation in planning or conducting remedial actions at the Site is not an admission of guilt or liability.

### **Site Listing**

Also enclosed is the information on this facility that Ecology intends to add to our database of suspected hazardous waste sites. Please review this information for its accuracy and return your comments within thirty (30) days of receipt of this letter.

### **Contact Information**

If you have any questions regarding this letter or if you would like additional information regarding the cleanup of hazardous waste sites, please call me at [PHONE NUMBER]. Thank you for your cooperation.

Sincerely,

[SITE MANAGER NAME]

[REGION ABBREVIATION] Toxics Cleanup Program

Enclosures: 2

ENCLOSE THE FOLLOWING DOCUMENTS:

- (1) FOCUS: MODEL TOXICS CONTROL ACT CLEANUP REGULATION: PROCESS  
FOR CLEANUP OF HAZARDOUS WASTE SITES (Pub. No. #94-129)
- (2) VOLUNTARY WAIVER OF RIGHT TO COMMENT FORM

## Attachment 5

[EXAMPLE]

[PLP NOTICE OF FINDING]

[DETERMINED TO BE A PLP]

**\*MUST BE SENT CERTIFIED MAIL\***

**RETURN RECEIPT REQUESTED OR BY PERSONAL DELIVERY**

[DATE]

[PLP NAME]

[PLP ADDRESS]

RE: Determination of Potentially Liable Person Status

Dear [PLP NAME]:

On [DATE] the Department of Ecology (Ecology) sent you written notice regarding your proposed status as a potentially liable person (PLP) for a release of hazardous substances at the following site:

- Name: [SITE NAME]
- Address: [SITE ADDRESS]
- County Assessor's Parcel Number(s) [OPTIONAL]
- Facility/Site No.: [SITE NUMBER]

The 30-day comment period on this preliminary notice expired on [DATE].

[WE HAVE RECEIVED AND EVALUATED YOUR COMMENTS] (or) [WE HAVE NOT RECEIVED COMMENTS FROM YOU AS OF (date)] (or) [WE HAVE RECEIVED YOUR WRITTEN NOTICE ACCEPTING LIABILITY FOR THE SITE]. Based on the information available to date, Ecology finds that credible evidence exists which supports your status as a potentially liable person for the release at [SITE]. On the basis of this finding, Ecology has determined that you are a Potentially Liable Person (PLP) with regard to [SITE].

Your rights and responsibilities as a PLP are outlined in Chapter 70.105D RCW, and WAC 173-340. Ecology's site manager for the facility [SITE MANAGER'S NAME], will contact you with information about how Ecology intends to proceed with the cleanup at this site.

If you have any questions regarding this notice, please contact [NAME] at [NUMBER].

Sincerely,

[SECTION MANAGER]

Toxics Cleanup Program

[OFFICE LOCATION]

## Attachment 6

[EXAMPLE]

[PLP NOTICE OF FINDING]

[DETERMINED NOT TO BE A PLP]

**\*MUST BE SENT CERTIFIED MAIL\***

**RETURN RECEIPT REQUESTED OR BY PERSONAL DELIVERY**

[DATE]

[PLP NAME]

[PLP ADDRESS]

RE: Determination of Potentially Liable Person Status

Dear [PLP NAME]:

On [DATE] the Department of Ecology (Ecology) sent you written notice regarding your proposed status as a potentially liable person (PLP) for a release of hazardous substances at the following site:

- Name: [SITE NAME]
- Address: [SITE ADDRESS]
- County Assessor's Parcel Number(s) [OPTIONAL]
- Facility/Site No.: [SITE NUMBER]

The 30-day comment period on this preliminary notice expired on [DATE].

### OPTION 1:

[WE HAVE RECEIVED AND EVALUATED YOUR COMMENTS] (or) [WE HAVE NOT RECEIVED COMMENTS FROM YOU AS OF (date)]. Based on the information available to at this time, Ecology has determined that it will not make a final determination that [PLP] is a PLP. This does not preclude Ecology from establishing [PLP's] status as a PLP at some later date. This determination is subject to change at any time should additional information be received.

### OPTION 2:

[WE HAVE RECEIVED AND EVALUATED YOUR COMMENTS] (or) [WE HAVE NOT RECEIVED COMMENTS FROM YOU AS OF (date)]. Based on the information available at this time, Ecology has determined that you will not be considered a PLP for the release at [SITE]. This does not preclude Ecology from establishing [PLP's] status as a PLP at some later date.

Please note that this determination is subject to change should additional information be received.

We thank you for your cooperation in this matter. If you have any further information about the release or questions about this notice, please contact the site manager for this facility, [SITE MANAGER'S NAME], at [PHONE]

Sincerely,

[SECTION MANAGER]  
Department of Ecology  
Toxics Cleanup Program

## Attachment 7

[EXAMPLE]

[PLP WAIVER]

[PLP NAME]

[ADDRESS]

Pursuant to WAC 173-340-500 and WAC 173-340-520(1)(b)(i), I (NAME) \_\_\_\_\_,  
a duly authorized representative of (COMPANY NAME) \_\_\_\_\_,  
do hereby waive the right to the thirty- (30) day notice and comment period described in WAC  
173-340-500(3) and accept status of (COMPANY NAME) as a Potentially Liable Person at the  
following site:

- Name: [SITE NAME]
- Address: [SITE ADDRESS]
- County Assessor's Parcel Number(s) [OPTIONAL]
- Facility/Site No.: [SITE NUMBER-Ecology should fill in this field]

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This waiver is solely for purposes of entering into [LEGAL DOCUMENT] \_\_\_\_\_.

By waiving this right, (COMPANY NAME) makes no admission of liability.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Relation To The Site (i.e., owner or operator)

## Attachment 8

[EXAMPLE]

[NOTICE THAT ADDITIONAL PLPs HAVE BEEN NOTICED]

**\*MUST BE SENT CERTIFIED MAIL\***

**RETURN RECEIPT REQUESTED OR BY PERSONAL DELIVERY**

[DATE]

[NAME OF PLP]

[ADDRESS]

RE: Notice of Additional PLPs at [SITE]

Dear [NAME]:

On [DATE] the Department of Ecology (Ecology) notified you that we had determined you were a potentially liable person (PLP) at the following site:

- Name: [SITE NAME]
- Address: [SITE ADDRESS]
- County Assessor's Parcel Number(s) [OPTIONAL]
- Facility/Site No.: [SITE NUMBER]

Since that notice we have determined the following additional persons are PLPs for the site:

[LIST OF PLPs]

Ecology suggests you contact these other PLPs to discuss how you can jointly work together to most efficiently clean up this site.

If you have any questions regarding this letter, please contact [SITE MANAGER] at [PHONE NUMBER].

Sincerely,

[SECTION MANAGER]

Department of Ecology

[REGIONAL OFFICE]